

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BIOVAIL LABORATORIES)	
INTERNATIONAL SRL)	
a corporation of Barbados,)	
)	
Plaintiff,)	C.A. No. 05-586-KAJ
v.)	(consolidated case)
)	
ANDRX PHARMACEUTICALS, LLC)	
and ANDRX CORPORATION)	
)	
Defendants.)	

NOTICE OF SUBPOENA AD TESTIFICANDUM & DUCES TECUM

PLEASE TAKE NOTICE that, pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure and the attached subpoena and accompanying schedules, which have been or will be served, defendants will take the deposition upon oral examination of Röhm America on April 28, 2006, commencing at 9:00 a.m., at the offices of Esquire Deposition Services, 90 Woodbridge Center Dr. #340, Woodbridge, NJ 07095. The deposition will be recorded by videotape and by stenographic means and shall continue from day to day until completed. You are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rules 34 and 45 of the Federal Rules of Civil Procedure, and the attached subpoena and accompanying schedules, which have been or will be served, Röhm America also has been commanded to produce documents for copying or inspection on April 28, 2006, at the offices of Esquire Deposition Services, 90 Woodbridge Center Dr. #340, Woodbridge, NJ 07095.

OF COUNSEL:

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Dated: April 10, 2006
727504 / 30015

By: /s/ Kenneth L. Dorsney
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EXHIBIT A

AO 88 (Rev. 1/94) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BIOVAIL LABORATORIES INT'L SRL,
Plaintiff,

v.

ANDRX PHARMACEUTICALS, LLC, ET AL.,
Defendants.

**SUBPOENA DUCES TECUM
IN A CIVIL CASE**

CASE NUMBER:¹ **CA No. 05-586**
(UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF DELAWARE)

TO: Röhm America
2 Turner Place
Piscataway, NJ 08855-0365

☐ **YOU ARE COMMANDED** to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ **YOU ARE COMMANDED** to appear at the place, date and time specified below to testify in the above case.

PLACE OF DEPOSITION Esquire Deposition Services 90 Woodbridge Center Dr, #340 Woodbridge, New Jersey 07095	DATE AND TIME April 28, 2006 9:00 a.m.
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☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects): See Attachment A.

PLACE Esquire Deposition Services 90 Woodbridge Center Dr, #340 Woodbridge, New Jersey 07095	DATE AND TIME April 28, 2006 9:00 a.m.
---	--

☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Douglas H. Carsten, Attorney Attorney for Defendants	DATE April 6, 2006
--	------------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Douglas H. Carsten, Foley & Lardner, 11250 El Camino
Real, Suite 200, San Diego, CA (858) 847-6700

(See Rule 45 Federal Rules of Civil Procedure Parts C & D on Reverse)

d8 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED <u>April 7, 2006</u>	<u>2 Turner Place</u> <u>Piscataway, NJ 08855</u>
SERVED ON (PRINT NAME)	MANNER OF SERVICE
<u>George Smith</u>	<u>In-Hand</u>
SERVED BY (PRINT NAME)	TITLE
<u>Tom Fredericks</u>	<u>Process Server</u>

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

April 10, 2006
DATE

SIGNATURE OF SERVER

[Signature]

ADDRESS OF SERVER

1600 JFK Blvd
Phila PA 19103

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:
 (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may

in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
 (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A

Instructions:

1. If any document requested was formerly in the possession, custody or control of Röhm America LLC and has been lost or destroyed, Röhm America LLC is requested to submit in lieu of each document a written statement which:

- (a) describes in detail the nature of the document and its contents;
- (b) identifies the person who prepared or authored the document and, if applicable, the person to whom the document was sent;
- (c) specifies the date on which the document was prepared or transmitted or both;
- (d) specifies, if possible, the date on which the document was lost or destroyed, and, if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

2. If any documents otherwise required to be produced by this request are withheld, Röhm America LLC, no later than April 28, 2006, shall expressly state the reasons for withholding and describe the documents in detail pursuant to the requirements of the Federal Rules of Civil Procedure and the Local Rules of District of Delaware.

3. This subpoena for production of documents is continuing and any document obtained or located subsequent to production, which would have been produced had it been available or its existence known at the time, is to be supplied forthwith.

SCHEDULE A – DOCUMENT REQUESTS

1. Documents sufficient to determine the composition of Eudragit E30D from January 1, 1984 to December 31, 1991.
2. Documents sufficient to determine the composition of Eudragit NE30D from January 1, 1984 to December 31, 1991.
3. Documents sufficient to determine the composition of Eudragit RS100 from January 1, 1984 to December 31, 1991.
4. Documents sufficient to determine the composition of Eudragit RL100 from January 1, 1984 to December 31, 1991.
5. Documents sufficient to determine the composition of Eudragit RS12.5 from January 1, 1984 to December 31, 1991.
6. Documents sufficient to determine the composition of Eudragit RL12.5 from January 1, 1984 to December 31, 1991.
7. Documents sufficient to determine the composition of Eudragit RS30 from January 1, 1984 to December 31, 1991.
8. Documents sufficient to determine the composition of Eudragit RL30D from January 1, 1984 to December 31, 1991.
9. Documents sufficient to determine the composition of Eudragit NE30D from January 1, 2000 to present.

SCHEDULE B—SUBJECTS FOR EXAMINATION

1. Information sufficient to determine the composition of Eudragit E30D from January 1, 1984 to December 31, 1991.
2. Information sufficient to determine the composition of Eudragit NE30D from January 1, 1984 to December 31, 1991.
3. Information sufficient to determine the composition of Eudragit RS100 from January 1, 1984 to December 31, 1991.
4. Information sufficient to determine the composition of Eudragit RL100 from January 1, 1984 to December 31, 1991.
5. Information sufficient to determine the composition of Eudragit RS12.5 from January 1, 1984 to December 31, 1991.
6. Information sufficient to determine the composition of Eudragit RL12.5 from January 1, 1984 to December 31, 1991.
7. Information sufficient to determine the composition of Eudragit RS30 from January 1, 1984 to December 31, 1991.
8. Information sufficient to determine the composition of Eudragit RL30D from January 1, 1984 to December 31, 1991.
9. Information sufficient to determine the composition of Eudragit NE30D from January 1, 2000 to present.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Kenneth L. Dorsney, hereby certify that on April 10, 2006, the attached document was hand-delivered on the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF.

Jack B. Blumenfeld
Melissa Stone Myers
Morris, Nichols, Arsht & Tunnell
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P.O. Box 1347
Wilmington, DE 19899

I hereby certify that on April 10, 2006, I have Electronically Mailed the documents to the following non-registered participants:

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